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9 Attorneys for Defendants Homeward Residential, Inc. formerly known as American  
 10 Home Mortgage Servicing, Inc. and Power Default Services, Inc.

11 UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

12 SAMUEL D. ELLSWORTH and ROBIN  
 13 ELLSWORTH,

14 Plaintiffs,

15 v.

16 AMERICAN HOME MORTGAGE  
 17 SERVICING, INC., a business entity  
 18 form unknown and POWER DEFAULT  
 19 SERVICES, INC., a business entity form  
 20 unknown and DOES 1-100, inclusive,

21 Defendants.

CASE NO.: SACV12-1499 AG  
 (MLGX)

DEFENDANTS' HOMEWARD  
 RESIDENTIAL, INC. AND POWER  
 DEFAULT SERVICES, INC.'S  
 MOTION IN LIMINE NO. 1 RE  
 DAMAGES

Judge: Andrew Guilford

Complaint Filed: August 2, 2012  
 Trial Date: June 18, 2013

22 Defendants Homeward Residential, Inc. formerly known as American Home  
 23 Mortgage Servicing, Inc. and Power Default Services, Inc. ("Defendants") seek an  
 24 order to exclude any evidence by Plaintiffs that they have suffered damages, or any  
 25 comment by parties or counsel to the effect that Plaintiffs have suffered damages,  
 26 with the sole exception of any evidence of mortgage payments by Plaintiffs to  
 27 Defendants *in excess of* payments required by Plaintiffs' loan documents, as follows:

28 1. Plaintiffs assert three causes of action and no others: (a) Violation of  
 Civil Code § 2923.5; (2) Violation of Business and Professions Code § 17200; and  
 (3) an accounting.

2. Plaintiffs cannot recover damages for an alleged violation of Civil Code  
 § 2923.5. *Mabry v. Superior Court*, 185 Cal. App. 4th 208, 231 (2010) ("A



1 remarkable aspect of section 2923.5 is that it appears to have been carefully drafted  
 2 to avoid bumping into federal law, precisely because it is limited to affording  
 3 borrowers only more time when lenders do not comply with the statute”), *accord id.*  
 4 at 236 (“By the same token, in light of the limited right to time conferred under  
 5 section 2923.5, we also deny the writ petition insofar as it seeks reinstatement of any  
 6 claim for money damages”).

7 3. Plaintiffs cannot recover damages for an alleged violation of Bus. &  
 8 Prof. Code § 17200 because the complaint does not allege that Defendants obtained  
 9 money *from Plaintiffs* by means of a violation of Civil Code § 2923.5, because a  
 10 violation of Civil Code § 2923.5, if proven, is not a basis for a damage award, and  
 11 because § 17200 authorizes a court to require disgorgement of money only to the  
 12 party from whom it was unfairly obtained. *Korea Supply Co. v. Lockheed Martin*  
 13 *Corp.*, 29 Cal. 4th 1134, 1145 (Cal. 2003) (“disgorgement of money obtained  
 14 through an unfair business practice is an available remedy in a representative action  
 15 only to the extent that it constitutes restitution.”).

16 4. For these reasons, evidence of or reference to damages has no relevance  
 17 to any issue in this case and is therefore inadmissible. F. R. Evid. Rules 401 & 403.  
 18 Its introduction into this trial should be prohibited to avoid the “danger of unfair  
 19 prejudice, confusion of the issues, or misleading the jury.” F. R. Evid. Rule 403.  
 20

21 Dated: May 24, 2013

SMITH DOLLAR PC

/s/ Antonio L. Cortés

By

Antonio L. Cortés  
 Attorneys for Defendants Homeward  
 Residential, Inc. formerly known as  
 American Home Mortgage Servicing, Inc.  
 and Power Default Services, Inc.



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 24, 2013 a true and accurate copy of the foregoing was filed with the Clerk of Courts using the CF/ECF System, which will send notification of such filing to the following:

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